

1 Muriel B. Kaplan, Esq. (SBN 124607)
Michele R. Stafford, Esq. (SBN 172509)
2 SALTZMAN & JOHNSON LAW CORPORATION
120 Howard Street, Suite 520
3 San Francisco, CA 94105
Telephone (415) 882-7900
4 Facsimile (415) 882-9287
mkaplan@sjlawcorp.com
5 mstafford@sjlawcorp.com

6 Attorneys for Plaintiffs

7 Robert D. Swanson, Esq. (SBN 162816)
BOUTIN GIBSON DI GUISTO HODELL, INC.
8 555 Capitol Mall, Suite 1500
Sacramento, CA 95814
9 Telephone (916) 321-4444
10 Facsimile (916) 441-7597

11 Attorneys for Defendants

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14

15 GIL CROSTHWAITE, RUSS BURNS, in their
respective capacities as Trustees of the
16 OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
17 CALIFORNIA, et al.

18 Plaintiffs,

19 v.

20 DALECON, INC., a California Corporation and
RONALD HENRY STICKNEY, an individual,

21 Defendants.
22

Case No.: C 07-05192 WHA

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

DATE: January 24, 2008

TIME: 11:00 a.m.

JUDGE: The Honorable William Alsup

23 The parties to the above-entitled action jointly submit this Case Management Statement:

24 1. **Jurisdiction and Service:** There are no known issues regarding Jurisdiction, nor
25 any additional parties to be named or served. Defendants dispute that venue is proper in this
26 district.
27

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1 2. **Facts:** Defendant, Dalecon, Inc. is a signatory to a Collective Bargaining
2 Agreement requiring that certain contributions be made for each hour worked by its employees.
3 Plaintiffs contend that defendants had become delinquent in contributions owed to the Trust Fund
4 plaintiffs. Additionally, an audit was performed to confirm proper reporting and / or payment to
5 the Trust Funds for the period from 2003 – 2005, which, plaintiffs contend, revealed additional
6 amounts due. Plaintiffs also contend that defendant Ronald Stickney is a guarantor of plaintiffs’
7 claims, and that liquidated damages, interest, attorney fees and costs (including audit costs) are
8 also owed to plaintiffs pursuant to the terms of the Agreement. Defendants dispute these
9 contentions.
10

11 3. **Legal Issues:** It does not appear at this point that there are disputed points of law,
12 except to the extent that the issue of whether Ronald Stickney is a guarantor of plaintiffs’ claims
13 involves legal (in addition to factual) issues.
14

15 4. **Motions:** Plaintiffs will file a Motion for Summary Judgment in the event that this
16 matter does not resolve informally or by mediation. Defendants may file a motion to transfer
17 venue and a motion for summary judgment as to the claim against Ronald Stickney personally.
18

19 5. **Amendment of Pleadings:** No amendments are anticipated.
20

21 6. **Evidence Preservation:** Not applicable.
22

23 7. **Disclosures:** The parties have made their initial Rule 26 disclosures. Additionally,
24 plaintiffs already provided a copy of the audit report and the total amount due. The majority of the
25 other documents that support plaintiffs’ claims are already in defendant's possession---the
26 Collective Bargaining Agreement, and the Contribution Reports submitted by defendant. The
27 parties’ disclosures are attached hereto.
28

 8. **Discovery:** No formal discovery has occurred to date. The parties do not propose
any limitations or modifications of the discovery rules.

1 9. **Class Actions:** This is not a class action.

2 10. **Related Cases:** There are no related cases.

3 11. **Relief:** As of today's date, a total of \$259,969.90 is claimed due by plaintiffs, plus
4 all attorney's fees and costs (including auditor's costs) incurred to date and continuing to accrue.

5 12. **Settlement and ADR:** The parties are both agreeable to mediation. The parties
6 have agreed to mediation pursuant to ADR L.R. 6. Plaintiffs have requested that defendants
7 provide information regarding their opposition to the amounts claimed due (none has been
8 provided to date), as well as documentation in support of their claims in the event that the amount
9 claimed due is contested. Nothing has been provided to date, nor a response to plaintiffs' claim.
10 Defendant Dalecon notes that it is still reviewing and analyzing plaintiffs' voluminous audit and
11 intends to provide a substantive response including disputed amounts.
12

13 13. **Consent to Magistrate:** The parties do not consent.

14 14. **Other References:** Not applicable

15 15. **Narrowing of Issues:** To date, in plaintiffs' view, there are no known disputes as
16 to the amount owed, a large portion of the amounts due are based on reports submitted by
17 defendant. Plaintiffs assert that the additional amounts due were found via audit and are owed
18 pursuant to the terms of the Trust Agreements and Collective Bargaining Agreement as well as the
19 mandates of ERISA. As set forth above, defendant Dalecon is reviewing plaintiffs' audit.
20 Defendant anticipates that upon completion of this review issues may be able to be narrowed to
21 disputes as to amounts claimed due for specific discrete time-periods and classifications.
22

23 16. **Expedited Schedule:** The parties are not of the view that this case can be handled
24 on an expedited basis.

25 17. **Scheduling:** The parties propose the following schedule:
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27
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Designation of experts: June 6, 2008
Designation of rebuttal experts: July 7, 2008
Completion of discovery: August 8, 2008
Dispositive motions: September 12, 2008
Final Pretrial Conference: November 7, 2008
Trial: January 19, 2009

18. **Trial:** This is expected to be a 3 – 5 day bench trial.

19. **Disclosure of non-party entities or persons:** Plaintiffs do not know of any other parties that may have an interest in this litigation. Defendants do not know of any other parties who have an interest in this litigation

20. **Other:** There are no other matters that may affect disposition of this action.

Respectfully submitted,

Dated: January 16, 2008

SALTZMAN & JOHNSON LAW CORPORATION

_____/s/_____
Michele R. Stafford
Attorneys for Plaintiffs

Dated: January 16, 2008

BOUTIN GIBSON DI GUISTO HODELL, INC

_____/s/_____
Robert Swanson
Attorneys for Defendants